Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-183

SAMMIE JOE MINIX,
Petitioner,
vs.
STATE OF INDIANA,
Respondent.

FROM THE INDIANA COURT OF APPEALS

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether or not Petitioner was deprived of his right to a fair trial by the Trial Court's action of forcing Petitioner to go to trial represented by a "hostile" paid legal counsel?

2. Whether or not Petitioner was deprived of his right to a fair trial by the Trial Court's refusal to grant Petitioner a continuance of only a few days to obtain "sympathetic" counsel?

3. Was Petitioner deprived of a fair trial by the Trial Court's refusal to grant him a continuance to obtain friendly counsel, of Petitioner's own choosing, when the Trial Court knew that Petitioner's hostile counsel "of record" had failed and refused to timely turn over Petitioner's records to new counsel?

STATEMENT OF THE CASE

The Petitioner, Sammie Joe Minix, was convicted in the Starke Circuit Court of Starke County, Indiana, on two counts of theft of over $100 and one count of attempted arson. On September 14, 1977, the Third District of the Indiana Court of Appeals affirmed the conviction in an unpublished Memorandum Decision. (Petitioner's Brief, Appendix A).

Petitioner's Petition for Rehearing was denied November 16, 1977, and the Indiana Supreme Court denied the Petition for Transfer May 9, 1978.

STATEMENT OF THE FACTS

The facts relevant to this petition reveal that the Petitioner was tried by jury on April 6, 1976. Immediately preceding the trial, the Petitioner moved for a continuance for the purpose of changing attorneys. The motion was denied and the Petitioner agreed to have his original attorney represent him at trial.

ARGUMENT

The Petitioner contends that the trial court's refusal to grant his motion for a continuance denied him his right to counsel and was consequently a denial of due process.

The law in Indiana is clear that the granting of a continuance upon other than a statutory ground is within the discretion of the trial court. Upon review, the Court may overrule the trial court's decision only if it finds an abuse of discretion. I.C. 35-1-26-1; Indiana Trial Rule 53.4;

Works v. State, (1977) —— Ind. ——, 362 N.E.2d 144. In order to show an abuse of the trial court's discretion, the record must disclose that the defendant was prejudiced by the denial of his motion. *Schumann v. State,* (1977) —— Ind. App. ——, 360 N.E.2d 277.

Likewise, this Court has consistently held that the granting of a continuance is within the discretion of the trial court. "The matter of continuance is traditionally within the discretion of the trial judge, and it is not every denial of a request for more time that violates due process even if the party fails to offer evidence or is compelled to defend without counsel." *Ungar v. Sarafite,* (1964) 376 U.S. 575, 84 S.Ct. 841.

Following this reasoning, the Court of Appeals for the Seventh Circuit in *United States v. Rothman,* (7th Cir. 1977), 567 F.2d 744, decided there was no abuse of discretion where the trial court had fully weighed and considered the matter of a continuance. The Court stated, "[T]he necessary expeditious disposal of criminal cases requires the most effective use of the time permitted for trial preparation without reliance upon the routine continuances that may have been customary in the past."

In order for the Petitioner to show that the trial court abused its discretion in denying his motion for a continuance, he must demonstrate how he was prejudiced by the denial.

The Petitioner fails to point out in both his Appellant's brief and his Petition for Writ of Certiorari any single action that was prejudicial to him. He does not specifically allege that his attorney did not zealously represent him. The Petitioner has failed to demonstrate any way in which he was prejudiced by the denial of his motion for a continuance.

The record reveals that the defendant, at trial, was afforded his right to effective counsel. Both before and

during trial the defendant's attorney represented him competently and zealously. The record fails to disclose any way in which the defendant was not afforded his constitutional right to a fair trial as well as effective assistance of counsel.

CONCLUSION

For the foregoing reasons, the Respondent, State of Indiana, respectfully requests that this Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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